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Board of Vocational Nursing
and Psychiatric Technicians

8
9 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. VN-2009-178

12 **GERALD TACLIBON LACUESTA**
13 **22276 Anthony Drive**
14 **Lake Forest, CA 92630**

A C C U S A T I O N

15 **Vocational Nurse License No. VN 219967**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in
21 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric
22 Technicians, Department of Consumer Affairs.

23 2. On or about April 12, 2006, the Board of Vocational Nursing and Psychiatric
24 Technicians issued Vocational Nurse License Number VN 219967 to Gerald Taclibon Lacuesta
25 (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to
26 the charges brought herein and will expire on January 31, 2012, unless renewed.

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1 JURISDICTION

2 3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric
3 Technicians (Board), Department of Consumer Affairs, under the authority of the following laws.
4 All section references are to the Business and Professions Code (Code) unless otherwise
5 indicated.

6 4. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license
7 shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the period
8 within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1
9 of the Code, the Bureau may renew an expired license at any time within four years after the
10 expiration.

11 5. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the
12 holder of a vocational nurse license for any reason provided in Article 3 (commencing with
13 section 2875) of the Vocational Nursing Practice Act.

14 STATUTORY PROVISIONS

15 6. Section 482 of the Code states:

16 Each board under the provisions of this code shall develop criteria to
17 evaluate the rehabilitation of a person when:

18

19 (b) Considering suspension or revocation of a license under Section 490.

20 Each board shall take into account all competent evidence of rehabilitation
21 furnished by the applicant or licensee.

22 7. Section 490 of the Code states:

23 (a) In addition to any other action that a board is permitted to take against a
24 licensee, a board may suspend or revoke a license on the ground that the licensee
25 has been convicted of a crime, if the crime is substantially related to the
26 qualifications, functions, or duties of the business or profession for which the
27 license was issued.

28 (b) Notwithstanding any other provision of law, a board may exercise any
authority to discipline a licensee for conviction of a crime that is independent of
the authority granted under subdivision (a) only if the crime is substantially related
to the qualifications, functions, or duties of the business or profession for which
the licensee's license was issued.

1 (c) A conviction within the meaning of this section means a plea or verdict
2 of guilty or a conviction following a plea of nolo contendere. Any action that a
3 board is permitted to take following the establishment of a conviction may be
4 taken when the time for appeal has elapsed, or the judgment of conviction has been
5 affirmed on appeal, or when an order granting probation is made suspending the
6 imposition of sentence, irrespective of a subsequent order under the provisions of
7 Section 1203.4 of the Penal Code.

8 (d) The Legislature hereby finds and declares that the application of this
9 section has been made unclear by the holding in *Petropoulos v. Department of*
10 *Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has
11 placed a significant number of statutes and regulations in question, resulting in
12 potential harm to the consumers of California from licensees who have been
13 convicted of crimes. Therefore, the Legislature finds and declares that this section
14 establishes an independent basis for a board to impose discipline upon a licensee,
15 and that the amendments to this section made by Senate Bill 797 of the 2007 -08
16 Regular Session do not constitute a change to, but rather are declaratory of,
17 existing law.

18 8. Section 493 of the Code states:

19 Notwithstanding any other provision of law, in a proceeding conducted by a
20 board within the department pursuant to law to deny an application for a license or
21 to suspend or revoke a license or otherwise take disciplinary action against a
22 person who holds a license, upon the ground that the applicant or the licensee has
23 been convicted of a crime substantially related to the qualifications, functions, and
24 duties of the licensee in question, the record of conviction of the crime shall be
25 conclusive evidence of the fact that the conviction occurred, but only of that fact,
26 and the board may inquire into the circumstances surrounding the commission of
27 the crime in order to fix the degree of discipline or to determine if the conviction is
28 substantially related to the qualifications, functions, and duties of the licensee in
question.

As used in this section, "license" includes "certificate," "permit,"
"authority," and "registration."

9. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the
Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the
following:

(a) Unprofessional conduct, which includes, but is not limited to, the
following:

....

(f) Conviction of a crime substantially related to the qualifications,
functions, and duties of a licensed vocational nurse, in which event the record of
the conviction shall be conclusive evidence of the conviction.

....

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

10. Section 2878.5 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

....

11. Section 2878.6 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a licensed vocational nurse is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

12. Section 4059 of the Code states, in pertinent part, that no person may furnish any dangerous drug, except upon the prescription of a physician.

13. Section 4060 of the Code states, in pertinent part, that no person shall possess any controlled substance without a prescription by a physician.

REGULATIONS

14. California Code of Regulations, title 16, section 2518.6, states:

....

1 (b) A licensed vocational nurse shall adhere to standards of the profession
2 and shall incorporate ethical and behavioral standards of professional practice
3 which include but are not limited to the following:

4

5 (4) Abstaining from chemical/substance abuse.

6

7 (c) A violation of this section constitutes unprofessional conduct for
8 purposes of initiating disciplinary action.

9 15. California Code of Regulations, title 16, section 2521, states:

10 For the purposes of denial, suspension, or revocation of a license pursuant to
11 Division 1.5 (commencing with Section 475) of the Business and Professions
12 Code, a crime or act shall be considered to be substantially related to the
13 qualifications, functions or duties of a licensed vocational nurse if to a substantial
14 degree it evidences present or potential unfitness of a licensed vocational nurse to
15 perform the functions authorized by his license in a manner consistent with the
16 public health, safety, or welfare. Such crimes or acts shall include but not be
17 limited to those involving the following:

18 (a) Procuring a license by fraud, misrepresentation, or mistake.

19 (b) A conviction of practicing medicine without a license in violation of
20 Chapter 5 of Division 2 of the Business and Professions Code.

21 (c) Violating or attempting to violate, directly or indirectly, or assisting in or
22 abetting the violation of, or conspiring to violate any provision or term of Chapter
23 6.5, Division 2 of the Business and Professions Code.

24 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
25 whether a licensed physician or not, in the performance of or arranging for a
26 violation of any of the provisions of Article 13, Chapter 5, Division 2 of the
27 Business and Professions Code.

28 (e) Conviction of a crime involving fiscal dishonesty.

(f) Any crime or act involving the sale, gift, administration, or furnishing of
"narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of
the Business and Professions Code.

16. California Code of Regulations, title 16, section 2522 states:

When considering ... b) the suspension or revocation of a license on the
ground that a licensee has been convicted of a crime, ... the Board in evaluating
the rehabilitation of an individual and his or her present eligibility for a license,
will consider the following criteria:

(1) Nature and severity of the act(s), offense(s), or crimes under
consideration.

- (2) Actual or potential harm to the public.
- (3) Actual or potential harm to any patient.
- (4) Overall disciplinary record.
- (5) Overall criminal actions taken by any federal, state or local agency or court.
- (6) Prior warnings on record or prior remediations.
- (7) Number and/or variety of current violations.
- (8) Mitigation evidence.
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- (10) Time passed since the act(s) or offense(s) occurred.
- (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code Section 1203.4.
- (12) Cooperation with the Board and other law enforcement or regulatory agencies.
- (13) Other rehabilitation evidence.

COSTS

17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

18. Ativan is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d)(16) and a dangerous drug pursuant to Business and Professions Code section 4022. Ativan is the trade name for lorazepam, which is a benzodiazepine with antianxiety, sedative, and anticonvulsant effects.

19. Vicodin is a Schedule III controlled substance pursuant to Health and Safety Code section 11055(b)(1)(J) and a dangerous drug pursuant to Business and Professions

1 Code section 4022. Vicodin is a trade name for the narcotic substance hydrocodone or
2 dihydrocodeione with the non-narcotic substance acetaminophen.

3 FIRST CAUSE FOR DISCIPLINE

4 (September 2, 2009 Conviction for False Personation on January 26, 2009)

5 20. Respondent is subject to disciplinary action under Code sections 490 and 2878(f) in
6 that Respondent was convicted of a crime substantially related to the practice of vocational
7 nursing. The circumstances are as follows:

8 a. On or about January 26, 2009, Respondent was convicted on his plea of guilty of
9 violating Penal Code section 529(3) (false personation) a misdemeanor, in the criminal
10 proceeding entitled *People vs. Gerald Taclibon Lacuesta*, Orange County Superior Court, Case
11 Number 09HM05606.

12 b. As a result of the conviction, on September 2, 2009, Respondent was sentenced to
13 three years informal probation, ordered to pay restitution and fines of \$260 and complete 40 hours
14 of community service.

15 c. The circumstances that led to the conviction are that on January 26, 2009,
16 Respondent was stopped by a police officer for a traffic violation and instead of giving the officer
17 his driver's license, Respondent gave the officer his roommate's driver's license with the name of
18 Brice P. on it and presented it as his own. The police officer then issued Respondent a traffic
19 ticket in the name of Brice P. The ticket went unpaid and the real Brice P. received a letter from
20 the court stating he needed to appear in court for an unpaid traffic ticket. Brice P. appeared in
21 court and pled not guilty telling the judge he was not the person issued the traffic citation. The
22 police investigated the matter further and determined that Respondent's father was the owner of
23 the car that was associated with the unpaid citation, and from that they were eventually able to
24 determine that Respondent was the driver who had been issued the traffic citation.

25 SECOND CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct: Dishonesty)

27 21. Respondent is subject to disciplinary action under Code section 2878(j) for
28 unprofessional conduct, in that he was dishonest. The circumstances are as follows:

1 a. On January 6, 2009, Respondent presented the driver's license of another as his
2 own to police officers, as more specifically set forth in paragraph 20 above and incorporated
3 herein.

4 b. In May 2008, during the course of a police investigation into K.F.'s death,
5 Respondent lied to police and told them that he did not know K.F., when he did, as more
6 specifically set forth in paragraph 23 below and incorporated herein.

7 THIRD CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct)

9 22. Respondent is subject to disciplinary action under Code section 2878(a) and (j) for
10 unprofessional conduct, in that he concealed the death of another and moved the body in an
11 attempt to escape detection. The circumstances are as follows:

12 23. On or about May 11 through 12, 2008, Respondent and a young man, K.F., were at
13 Respondent's apartment playing computer games and self-administering controlled substances.
14 Respondent had in his possession several Ativan pills and gave some to K.F. K.F. had in his
15 possession several Vicodin tablets and gave some to Respondent. Respondent and K.F. both self-
16 administered the Ativan and Vicodin pills over a two day period. K.F. also took other unknown
17 substances during the two day period. On or about May 12, 2008, Respondent left his apartment
18 to get some food and when he returned, he found K.F. dead in his bedroom. Respondent did not
19 call 911 or anyone else for help. Respondent moved K.F.'s body from his apartment and placed
20 the body in the back seat of K.F.'s car. Respondent drove K.F.'s car to a vacant parking lot and
21 parked the car there and left K.F.'s body in the car. Respondent took a taxi cab back home. A
22 citizen found K.F.'s body and called the police. The police were able to trace K.F. back to being
23 at Respondent's apartment the day before he died. When questioned regarding K.F.'s death,
24 Respondent lied to the police and told them he did not know K.F. When police questioned
25 Respondent a second time regarding K.F.'s death, Respondent admitted that he knew K.F. and
26 that he had died at Respondent's apartment. Respondent admitted to police that he put K.F.'s
27 body in his car and moved the body to another location. Respondent also admitted to the police
28 that he gave K.F. Ativan from on or about May 11 through 12, 2008 and that he self-administered

1 Ativan and Vicodin on or about May 11 through 12, 2008 while K.F. was at his apartment.
2 Respondent additionally told police that he did not have a prescription for Ativan or Vicodin.

3
4 FOURTH CAUSE FOR DISCIPLINE

5 (Unprofessional Conduct: Obtain, Possess and Self-Administer Controlled Substances)

6 24. Respondent is subject to disciplinary action under Code section 2878(a), on the
7 grounds of unprofessional conduct, as defined in Code section 2878.5(a), in that Respondent
8 illegally obtained, possessed and self-administered the controlled substances, Ativan and Vicodin,
9 in violation of Code sections 4059 and 4060, as more specifically set forth in paragraph 23 above
and incorporated herein.

10
11 FIFTH CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct: Furnishing a Controlled Substance to Another)

13 25. Respondent is subject to disciplinary action under Code section 2878(a), on the
14 grounds of unprofessional conduct, as defined in Code section 2878.5(a), in that on or about May
15 11 through 12, 2008, Respondent furnished the controlled substance, Ativan, to another in
16 violation of Code section 4059, as more specifically set forth in paragraph 23 above and
incorporated herein.

17
18 SIXTH CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct: Use of a Controlled Substance
in a Manner Dangerous to Himself and to Another)

20 26. Respondent is subject to disciplinary action under Code section 2878(a), on the
21 grounds of unprofessional conduct as defined in Code section 2878.5(b), in that on or about May
22 11 through 12, 2008, Respondent used controlled substances to an extent or in a manner
23 dangerous or injurious to himself and to another, when he self-administered Ativan and Vicodin
24 without a prescription; and while under the influence of Ativan and Vicodin provided K.F. with
25 Ativan. K.F. took the Ativan with other controlled substances and then died as more specifically
26 set forth in paragraph 23 above and incorporated herein.

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SEVENTH CAUSE FOR DISCIPLINE

(Violation of Regulation: Failure to Abstain from Chemical/Substance Abuse)

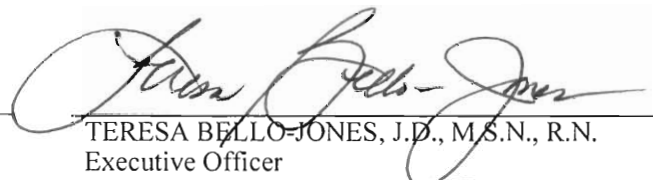
27. Respondent is subject to disciplinary action under Code section 2878(a) for unprofessional conduct, in that he violated California Code of Regulations, title 16, section 2518.6(b)(4), in that on or about May 11 through 12, 2008, Respondent failed to abstain from chemical/substance abuse when he self-administered the controlled substances, Ativan and Vicodin, without a prescription as more specifically set forth in paragraph 23 above and incorporated herein.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

- 1. Revoking or suspending Vocational Nurse License Number VN 219967, issued to Gerald Taclibon Lacuesta;
- 2. Ordering Gerald Taclibon Lacuesta to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 3. Taking such other and further action as deemed necessary and proper.

DATED: March 10, 2011.



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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